

SECRET**INDEX OF GENERAL PROVISIONS**

1.	DEFINITIONS.....	1
2.	CHANGES.....	1
3.	LIMITATION OF COST.....	2
4.	ALLOWABLE COST, FIXED FEE, AND PAYMENT.....	3
5.	INSPECTION AND CORRECTION OF DEFECTS.....	5
6.	ASSIGNMENT OF CLAIMS.....	7
7.	RECORDS.....	7
8.	SUBCONTRACTS.....	9
9.	UTILIZATION OF SMALL BUSINESS CONCERNS.....	10
10.	TERMINATION.....	10
11.	EXCUSABLE DELAYS.....	15
12.	DISPUTES.....	15
13.	NOTICE AND ASSISTANCE REGARDING PATENT LITIGATION.....	16
14.	BUY AMERICAN ACT.....	17
15.	CONVICT LABOR.....	17
16.	EIGHT-HOUR LAW OF 1912.....	17
17.	NONDISCRIMINATION IN EMPLOYMENT.....	18
18.	OFFICIALS NOT TO BENEFIT.....	19
19.	COVENANT AGAINST CONTINGENT FEES.....	19
20.	PATENT RIGHTS.....	19
21.	GOVERNMENT PROPERTY.....	24
22.	INSURANCE-LIABILITY TO THIRD PERSONS.....	29
23.	AUTHORIZATION AND CONSENT.....	30
24.	FILING OF PATENT APPLICATIONS.....	31
25.	REPORTING OF ROYALTIES.....	31
26.	RIGHTS IN DATA-UNLIMITED.....	33
27.	MILITARY SECURITY REQUIREMENTS.....	34
28.	WALSH-HEALEY PUBLIC CONTRACTS ACTS.....	35
29.	GRATUITIES.....	36
30.	NEGOTIATED OVERHEAD RATES.....	36
31.	DELAY IN DELIVERY OF DATA.....	37
32.	SUPERSSEDING SPECIFICATIONS.....	37
33.	FLIGHT RISK.....	38
34.	ALTERATIONS.....	39

SECRET

GENERAL PROVISIONS

1. DEFINITIONS (ASPR 7-103.1 AFPI 7-403.1)

As used throughout this contract, the following terms shall have the meanings set forth below:

(a) The term "Secretary" means the Secretary, the Under Secretary, or any Assistant Secretary of the Department and the head or any assistant head of the executive agency; and the term "his duly authorized representative" means any person or persons or board (other than the Contracting Officer) authorized to act for the Secretary.

(b) The term "Contracting Officer" means the person executing this contract on behalf of the Government, and any other officer or civilian employee who is a properly designated Contracting Officer; and the term includes, except as otherwise provided in this contract, the authorized representative of a Contracting Officer acting within the limits of his authority.

(c) Except as otherwise provided in this contract, the term "subcontracts" includes purchase orders under this contract.

(d) (AFPI 7-303.1) The term "contract work" means all work to be performed under this contract including any studies covering fundamental, theoretical, or experimental investigations; any extension of the investigative findings and theories of a scientific or technical nature into practical application; any tangible items, hereinafter referred to as "supplies," furnished to the Government; and any reports, data, computations, plans, drawings, and specifications with respect to any of the foregoing.

2. CHANGES (AFPI 7-403.2)

The Contracting Officer may at any time by a written order, make changes in or additions to the drawings and specifications, issue additional instructions, require additional work within the general scope of the contract, or change the place of delivery, method of shipment, or the amount of Government-Furnished property. If any such change causes an increase or decrease in the estimated cost of, or the time required for performance of this contract, or otherwise affects any

other provision of this contract, an equitable adjustment shall be made (i) in the estimated cost or delivery schedule, or both, (ii) in the amount of any fixed fee to be paid to the Contractor, and (iii) in such other provisions of the contract as may be so affected, and the contract shall be modified in writing accordingly. Any claim by the Contractor for adjustment under this clause must be asserted within sixty (60) days from the date of receipt by the Contractor of the notification of change; Provided, however, That the Contracting Officer, if he decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under this contract. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes." However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

3. LIMITATION OF COST (ASPR 7-203.3 AFPI 7-403.3)

(a) It is estimated that the total cost to the Government, exclusive of any fixed fee, for the performance of this contract will not exceed the estimated cost set forth in the Schedule, and the Contractor agrees to use its best efforts to perform the work specified in the Schedule and all obligations under this contract within such estimated cost. If at any time the Contractor has reason to believe that the costs which it expects to incur in the performance of this contract in the next succeeding thirty (30) days, when added to all costs previously incurred, will exceed eighty-five percent (85%) of the estimated cost then set forth in the Schedule, or if at any time, the Contractor has reason to believe that the total cost to the Government, exclusive of any fixed fee, for the performance of this contract will be substantially greater or less than the then estimated cost thereof, the Contractor shall notify the Contracting Officer in writing to that effect, giving its revised estimate of such total cost for the performance of this contract.

(b) The Government shall not be obligated to reimburse the Contractor for costs incurred in excess of the estimated cost set forth in the Schedule and the Contractor shall not be obligated to continue performance under the contract or to incur costs in excess of the estimated cost set forth in the Schedule, unless and until the Contracting Officer shall have notified the Contractor in writing that such estimated cost has been increased and shall have specified in such notice a revised estimated cost which shall thereupon constitute the estimated cost of performance of this contract. When and to the

extent that the estimated cost set forth in the Schedule has been increased, any cost incurred by the Contractor in excess of such estimated cost prior to the increase in estimated cost shall be allowable to the same extent as if such costs had been incurred after such increase in estimated cost.

4. ALLOWABLE COST, FIXED FEE, AND PAYMENT (ASPR 7-203.4 AFPI 7-403.4)

(a) For the performance of this contract, the Government shall pay to the Contractor the cost thereof determined by the Contracting Officer to be allowable in accordance with Part 2 of Section XV of the Armed Services Procurement Regulation as in effect on the date of this contract and the Schedule (hereinafter referred to as "Allowable Cost"), plus such fixed fee, if any, as may be provided for in the Schedule.

(b) Once each month (or at more frequent intervals, if approved by the Contracting Officer) the Contractor may submit to an authorized representative of the Contracting Officer, in such form and reasonable detail as such representative may require, an invoice or public voucher supported by a statement of cost incurred by the Contractor in the performance of this contract and claimed to constitute Allowable Cost. Each statement of cost shall be certified by an officer or other responsible official of the Contractor authorized by it to certify such statement.

(c) As promptly as may be practicable after receipt of each invoice or voucher and statement of cost, the Government shall, except as hereinafter provided and subject to the provisions of paragraph (d) below, make payment thereon as approved by the Contracting Officer. After payment of eighty-five percent (85%) of the fixed fee set forth in the Schedule, as from time to time amended, further payment on account of the fixed fee shall be withheld until a reserve of either (i) fifteen percent (15%) of the total fixed fee or (ii) \$100,000, whichever amount is less, shall have been set aside, such reserve or the balance thereof to be retained until the execution and delivery of a release by the Contractor as provided in paragraph (e) hereof.

(d) At any time or times prior to final payment under this contract the Contracting Officer may cause to be made such audit of the invoices or vouchers and statements of cost as shall be deemed necessary. Each payment theretofore made shall be subject to reduction to the extent of amounts included in the related invoice or voucher and statement of cost which are found by the Contracting Officer on the basis of such audit not to constitute Allowable Cost, and shall also be subject to reduction for

overpayment or to increase for underpayments on preceding invoices or vouchers. On receipt of the voucher or invoice designated by the Contractor as the "completion voucher" or "completion invoice" and statement of cost, which shall be submitted by the Contractor as promptly as may be practicable following completion of the work under this contract but in no event later than one (1) year (or such longer period as the Contracting Officer may, in his discretion, approve in writing) from the date of such completion, and following compliance by the Contractor with all provisions of this contract (including, without limitation, provisions relating to patents and the provisions of paragraphs (e) and (f) of this clause), the Government shall as promptly as may be practicable pay any balance of Allowable Cost.

(e) The Contractor and each assignee under an assignment entered into under this contract and in effect at the time of final payment under this contract shall execute and deliver at the time of and as a condition precedent to final payment under this contract, a release discharging the Government, its officers, agents and employees of and from all liabilities, obligations and claims arising out of or under this contract, subject only to the following exceptions:

- (1) Specified claims in stated amounts or in estimated amounts where the amounts are not susceptible of exact statement by the Contractor.
- (2) Claims, together with reasonable expenses incidental thereto, based upon the liabilities of the Contractor to third parties arising out of the performance of the contract, which are not known to the Contractor on the date of the execution of the release, and of which the Contractor gives notice in writing to the Contracting Officer not more than six (6) years after the date of the release or the date of any notice to the Contractor that the Government is prepared to make final payment, whichever is earlier.
- (3) Claims for reimbursement of costs (other than expenses of the Contractor by reason of its indemnification of the Government against patent liability), including reasonable expenses incidental thereto, incurred by the Contractor under the provisions of the contract relating to patents.

(f) The Contractor agrees that any refunds, rebates or credits (including any interest thereon) accruing to or received by the

Contractor or any assignee which arise out of the performance of this contract and on account of which the Contractor has received reimbursement shall be paid by the Contractor to the Government. The Contractor and each assignee under an assignment entered into under this contract and in effect at the time of final payment under this contract shall execute and deliver at the time of and as a condition precedent to final payment under this contract, an assignment to the Government of refunds, rebates or credits (including any interest thereon) arising out of the performance of this contract, in form and substance satisfactory to the Contracting Officer. Reasonable expenses incurred by the Contractor for the purpose of securing any such refunds, rebates or credits shall constitute Allowable Cost when approved by the Contracting Officer.

(g) Any cost incurred by the Contractor under the terms of this contract which would constitute Allowable Cost under the provisions of this clause shall be included in determining the amount payable under this contract, notwithstanding any provisions contained in the specifications or other documents incorporated in this contract by reference, designating services to be performed or materials to be furnished by the Contractor at its expense or without cost to the Government.

(h) Payment of the fixed fee shall be made to the Contractor as provided in the Schedule subject, however, to the withholding provisions of paragraph (c) hereof.

5. INSPECTION AND CORRECTION OF DEFECTS (AFPI 7-403.5)

(a) All work under this contract shall be subject to inspection and test by the Government, to the extent practicable at all reasonable times and places including the period of performance, and in any event prior to final acceptance. The Contractor shall provide and maintain an inspection system acceptable to the Government covering the work hereunder. The Government, through any authorized representative, may inspect the plant or plants of the Contractor or of any of its subcontractors engaged in the performance of this contract. If any inspection or test is made by the Government on the premise of the Contractor or a subcontractor, the Contractor shall provide and shall require subcontractors to provide all reasonable facilities and assistance for the safety and convenience of the Government inspectors in the performance of their duties. All inspections and tests by the Government shall be performed in such a manner as will not unduly delay the work. Final inspection and acceptance by the Government shall be made as promptly as practicable after delivery. The time and place of delivery, final inspection, and acceptance shall be as set forth in the Schedule.

(b) The Contractor warrants that the services rendered in the performance of this contract will conform to the requirements of this contract and to high professional standards in the field and that any article delivered to the Government under this contract will conform

to the requirements of this contract and will not be defective in material or workmanship.

(c) At any time during performance of this contract, but not later than six (6) months (or such other period as may be provided in the schedule) after final acceptance, the Government may require the Contractor to remedy by correction or replacement as directed by the Contracting Officer, any failure by the Contractor to comply with its obligations under paragraph (b) hereof. Except as otherwise provided in paragraph (d) hereof, the cost of any such replacement or correction shall be included in "Allowable Cost" determined as provided in the clause of this contract entitled "Allowable Cost, Fixed Fee and Payment," but no additional fee shall be payable with respect thereto. Corrected articles shall not be tendered again for acceptance unless the former tender and the requirement of correction is disclosed. If the Contractor fails to proceed with reasonable promptness to perform such replacement or correction, the Government (i) may by contract or otherwise perform such replacement or correction and charge to the Contractor any increased cost occasioned the Government thereby, or may reduce any fixed fee payable under this contract (or require repayment of any fixed fee theretofore paid) in such amount as may be equitable under the circumstances; or (ii) in the case of articles not delivered, may require the delivery of such articles and shall have the right to reduce any fixed fee payable under this contract (or to require repayment of any fixed fee theretofore paid) in such amount as may be equitable under the circumstances; or (iii) may terminate this contract for default as provided in the clause of this contract entitled "Termination." Failure to agree on the amount of any such increased cost to be charged to the Contractor or to such reduction in, or repayment of, the fixed fee shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes".

(d) Notwithstanding the provisions of paragraph (c) hereof, the Government may at any time require the contractor to remedy by correction or replacement, without cost to the Government, any failure by the Contractor to comply with its obligations under paragraph (b) hereof, if such failure is due to fraud, lack of good faith, or willful misconduct on the part of any of the contractor's directors or officers, or on the part of any of its managers, superintendents, or other equivalent representatives, who has supervision or direction of (i) all or substantially all of the Contractor's business; or (ii) all or substantially all of the Contractor's operations at any one plant or separate location in which this contract is being performed; or (iii) a separate and complete major industrial operation in connection with the performance on this contract. Fraud, lack of good faith, or willful misconduct on the part of any of such supervisory personnel shall be deemed to include the selection of individual employees or the retention of employees after any of such supervisory personnel has reason to believe that such employees are habitually careless or otherwise unqualified.

(CPFF Apr. 18, '58)

(e) Corrected articles tendered as replacements shall be subject to the provisions of this clause in the same manner and to the same extent as supplies originally delivered under this contract.

(f) The Contractor shall make its records of all inspection work available to the Government during the performance of this contract and for such longer periods as may be specified in this contract.

(g) Except as provided in this clause and as may be provided in the Schedule, the Contractor shall have no obligation or liability to correct or replace supplies or lots of supplies which at the time of delivery are defective in materials or workmanship or otherwise not in conformity with the requirements of this contract.

ASSIGNMENT OF CLAIMS (ASPR 7-103.8 AFPI 7-403.6)

(a) Pursuant to the provisions of the Assignment of Claims Act of 1940 as amended (31 U.S. Code 203, 41 U.S. Code 15), if this contract provides for payments aggregating \$1,000 or more, claims for monies due or to become due the Contractor from the Government under this contract may be assigned to a bank, trust company, or other financing institution, including any Federal Lending agency, and may thereafter be further assigned and reassigned to any such institution. Any such assignment or reassignment shall cover all amounts payable under this contract and not already paid, and shall not be made to more than one party, except that any such assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in such financing. Notwithstanding any provision of this contract, payments to an assignee of any monies due or to become due under this contract shall not, to the extent provided in said Act as amended, be subject to reduction or set-off.

(b) In no event shall copies of this contract or of any plans, specifications, or other similar documents relating to work under this contract, if marked "Top Secret", "Secret", or "Confidential", be furnished to any assignee of any claim arising under this contract or to any other person not entitled to receive the same; provided, That a copy of any part or all of this contract so marked may be furnished, and any information contained therein may be disclosed, to such assignee upon the prior written authorization of the Contracting Officer.

RECORDS (ASPR 7-203.7 AFPI 7-403.7)

(a)(1) The Contractor agrees to maintain books, records, documents and other evidence pertaining to the costs and expenses of this contract hereinafter collectively called the "records") to the extent and in such detail as will properly reflect all net costs, direct and indirect of labor, materials, equipment, supplies and services, and other costs

and expenses of whatever nature for which reimbursement is claimed under the provisions of this contract. The Contractor's accounting procedures and practices shall be subject to the approval of the Contracting Officer; provided, however, that no material change will be required to be made in the Contractor's accounting procedures and practices if they conform to generally accepted accounting practices and if the costs properly applicable to this contract are readily ascertainable therefrom.

(2) The Contractor agrees to make available at the office of the Contractor at all reasonable times during the period set forth in subparagraph (4) below any of the records for inspection, audit or reproduction by an authorized representative of the Contracting Officer.

(3) In the event the Contracting Officer or any of his duly authorized representatives determines that his audit of the amounts reimbursed under this contract as transportation charges will be made at a place other than the office of the Contractor, the Contractor agrees to deliver, with the reimbursement voucher covering such charges or as may be otherwise specified within two years after reimbursement of charges covered by any such voucher, to such representative as may be designated for that purpose through the Contracting Officer such documentary evidence in support of transportation costs as may be required by the Contracting Officer or any of his duly authorized representatives.

(4) Except for documentary evidence delivered to the Government pursuant to subparagraph (3) above, the Contractor shall preserve and make available its records for a period of six years (unless a longer period of time is provided by applicable statute) from the date of the voucher or invoice submitted by the Contractor after the completion of the work under the contract and designated by the Contractor as the "completion voucher" or "completion invoice" or, in the event this contract has been completely terminated, from the date of the termination settlement agreement; provided, however, the records which relate to (A) appeals under the clause of this contract entitled "Disputes", (B) litigation or the settlement of claims arising out of the performance of this contract, or (C) costs or expenses of the contract as to which exception has been taken by the Contracting Officer or any of his duly authorized representatives, shall be retained by the Contractor until such appeals, litigation, claims, or exceptions have been disposed of, but in no event for less than the six-year period mentioned above.

(5) Except for documentary evidence delivered pursuant to subparagraph (3) above, and the records described in the proviso of subparagraph (4) above, the Contractor may in fulfillment of its obligation to retain its records as required by this clause substitute photographs, microphotographs or other authentic reproductions of such records, after the expiration of two years following the last day of the month of reimbursement to the Contractor of the invoice or voucher

(CPFF Apr. 18, '58)

to which such records relate, unless a shorter period is authorized by the Contracting Officer with the concurrence of the Comptroller of the Contracting Government Agency or his authorized representatives.

(6) The provisions of this paragraph (a), including this subparagraph (6), shall be applicable to and included in each subcontract hereunder which is on a cost, cost-plus-a-fixed-fee, time-and-material or labor-hour basis.

(b) The Contractor further agrees to include in each of his subcontracts hereunder, other than those set forth in subparagraph (a) (6) above, a provision to the effect that the subcontractor agrees that the Contracting Officer or any of his duly authorized representatives, shall, until the expiration of three years after final payment under the subcontract, have access to and the right to examine any directly pertinent books, documents, papers, and records of such subcontractor involving transactions related to the subcontract. The term "subcontract," as used in this paragraph (b) only excludes (i) purchase orders not exceeding \$1,000 and (ii) subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public.

8. SUBCONTRACTS (ASPR 7-203.8 AFPI 7-403.8)

(a) The Contractor shall give advance notification to the Contracting Officer of any proposed subcontract hereunder which (i) is on a cost or cost-plus-a-fixed-fee basis, or (ii) is on a fixed-price basis exceeding in dollar amount either \$25,000 or five percent (5%) of the total estimated cost of this contract.

(b) The Contractor shall not, without the prior written consent of the Contracting Officer, place any subcontract which (i) is on a cost or cost-plus-a-fixed-fee basis, or (ii) is on a fixed-price basis exceeding in dollar amount either \$25,000 or five percent (5%) of the total estimated cost of this contract, or (iii) provides for the fabrication, purchase, rental, installation or other acquisition, of any item of industrial facilities, or of special tooling having a value in excess of \$1,000, or (iv) is on a time-and-material or labor-hour basis, or (v) involves research and development work. The Contracting Officer may, in his discretion, ratify in writing any such subcontract; such action shall constitute the consent of the Contracting Officer as required by this paragraph (b).

(c) The Contractor agrees that no subcontract placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis.

(d) The Contracting Officer may, in his discretion, specifically approve in writing any of the provisions of a subcontract. However, such approval or the consent of the Contracting Officer obtained as required by this clause shall not be construed to constitute a determination of the allowability of any cost under this contract, unless such approval specifically provides that it constitutes a determination of the allowability of such cost.

(e) The Contractor shall give the Contracting Officer immediate notice in writing of any action or suit filed, and prompt notice of any claim made against the Contractor by any subcontractor or vendor which, in the opinion of the Contractor, may result in litigation, related in any way to this contract with respect to which the Contractor may be entitled to reimbursement from the Government.

(f) (AFPI 7-203.8) The Contracting Officer may approve all or part of the Contractor's purchasing system and from time to time rescind or reinstate such approval. Such approval shall be deemed to fulfill the requirements for obtaining the Contracting Officer's consent to subcontracts as prescribed in paragraph (b) above.

UTILIZATION OF SMALL BUSINESS CONCERNS (ASPR 7-104.14 AFPI 7-403.9)

(a) It is the policy of the Government as declared by the Congress to bring about the greatest utilization of small business concerns which is consistent with efficient production.

(b) The Contractor agrees to accomplish the maximum amount of subcontracting to small business concerns that the Contractor finds to be consistent with the efficient performance of this contract.

TERMINATION (ASPR 8-702 AFPI 7-403.10)

(a) The performance of work under the contract may be terminated by the Government in accordance with this clause in whole, or from time to time in part, (1) whenever the Contractor shall default in performance of this contract in accordance with its terms (including in the term "default" any such failure by the Contractor to make progress in the prosecution of the work hereunder as endangers such performance), and shall fail to cure such default within a period of ten days (or such longer periods as the Contracting Officer may allow) after receipt from the Contracting Officer of a notice specifying the default, or (2) whenever for any reason the Contracting Officer shall determine that such termination is in the best interest of the Government. Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying whether termination is for the default of the Contractor or for the convenience of the Government, the extent to which performance of work under the contract is terminated, and the date upon which such termination becomes effective. If after notice of termination of this contract for default under (1) above, it is

determined that the Contractor's failure to perform or to make progress in performance is due to causes beyond the control and without the fault or negligence of the Contractor pursuant to the provisions of the clause of this contract relating to excusable delays, the Notice of Termination shall be deemed to have been issued under (2) above, and the rights and obligations of the parties hereto shall in such event be governed accordingly.

(b) After receipt of a Notice of Termination and except as otherwise directed by the Contracting Officer, the Contractor shall (1) stop work under the contract on the date and to the extent specified in the Notice of Termination; (2) place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the contract as is not terminated; (3) terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination; (4) assign to the Government, in the manner and to the extent directed by the Contracting Officer, all of the right, title, and interest of the Contractor under the orders or subcontracts so terminated, in which case the Government shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts; (5) with the approval or ratification of the Contracting Officer, to the extent he may require, which approval or ratification shall be final and conclusive for all purposes of this clause, settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts the cost of which would be reimbursable, in whole or in part, in accordance with the provisions of this contract; (6) transfer title (to the extent that title has not already been transferred) and, in the manner, to the extent, and at the times directed by the Contracting Officer, deliver to the Government (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced as a part of, or acquired in respect of the performance of, the work terminated by the Notice of Termination, (ii) the completed or partially completed plans, drawings, information, and other property which, if the contract had been completed, would be required to be furnished to the Government, and (iii) the jigs, dies, and fixtures, and other special tools and tooling acquired or manufactured for the performance of this contract for the cost of which the Contractor has been or will be reimbursed under this contract; (7) use its best efforts to sell in the manner, at the times, to the extent, and at the price or prices directed or authorized by the Contracting Officer, any property of the types referred to in provision (6) of this paragraph, provided, however, that the Contractor (i) shall not be required to extend credit to any purchaser, and (ii) may acquire any such property under the conditions prescribed by and at a price or prices approved by the Contracting Officer; and provided further that the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the Government to the

Contractor under this contract or shall otherwise be credited to the price or cost of the work covered by this contract or paid in such other manner as the Contracting Officer may direct; (8) complete performance of such part of the work as shall not have been terminated by the Notice of Termination; and (9) take such action as may be necessary, or as the Contracting Officer may direct, for the protection and preservation of the property related to this contract which is in the possession of the Contractor and in which the Government has or may acquire an interest. The Contractor shall proceed immediately with the performance of the above obligations notwithstanding any delay in determining or adjusting the amount of the fixed-fee, or any item or reimbursable cost under this clause. At any time after expiration of the plant clearance period, as defined in Section VIII, Armed Services Procurement Regulation, as it may be amended from time to time, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of any or all items of termination inventory not previously disposed of, exclusive of items the disposition of which has been directed or authorized by the Contracting Officer, and may request the Government to remove such items or enter into a storage agreement covering them. Not later than fifteen (15) days thereafter, the Government will accept title to such items and remove them or enter into a storage agreement covering the same, provided that the list submitted shall be subject to verification by the Contracting Officer upon removal of the items, or if the items are stored, within forty-five (45) days from the date of submission of the list, and any necessary adjustment to correct the list as submitted shall be made prior to final settlement.

(c) After receipt of a Notice of Termination, the Contractor shall submit to the Contracting Officer its termination claim in the form and with the certification prescribed by the Contracting Officer. Such claim shall be submitted promptly but in no event later than two years from the effective date of termination, unless one or more extensions in writing are granted by the Contracting Officer upon request of the Contractor made in writing within such two-year period or authorized extension thereof. However, if the Contracting Officer determines that the facts justify such action, he may receive and act upon any such termination claim at any time after such two-year period or any extension thereof. Upon failure of the Contractor to submit its termination claim within the time allowed, the Contracting Officer may determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination and shall thereupon pay to the Contractor the amount so determined.

(d) Subject to the provisions of paragraph (c), the Contractor and the Contracting Officer may agree upon the whole or any part of the amount or amounts to be paid (including an allowance for the fixed-fee) to the Contractor by reason of the total or partial termination of work pursuant to this clause. The contract shall be amended accordingly, and the Contractor shall be paid the agreed amount.

(e) In the event of the failure of the Contractor and the Contracting Officer to agree in whole or in part, as provided in paragraph (d) above, as to the amounts with respect to costs and fixed-fee, or as to the amount of the fixed-fee, to be paid to the Contractor in connection with the termination of work pursuant to this clause, the Contracting Officer shall determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination and shall pay to the Contractor the amount determined as follows:

(1) If the settlement includes cost and fixed-fee

(i) There shall be included therein all costs and expenses reimbursable in accordance with this contract, not previously paid to the Contractor for the performance of this contract prior to the effective date of the Notice of Termination, and such of these costs as may continue for a reasonable time thereafter with the approval of or as directed by the Contracting Officer, provided, however, that the Contractor shall proceed as rapidly as practicable to discontinue such costs.

(ii) There shall be included therein so far as not included under (i) above, the cost of settling and paying claims arising out of the termination of work under subcontracts or orders, as provided in paragraph (b)(5) above, which are properly chargeable to the terminated portion of the contract.

(iii) There shall be included therein the reasonable costs of settlement, including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the contract and for the termination and settlement of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of termination inventory; provided, however, that if the termination is for default of the Contractor there shall not be included any amounts for the preparation of the Contractor's settlement proposal.

(iv) There shall be included therein a portion of the fixed-fee payable under the contract determined as follows:

(A) In the event of the termination of this contract for the convenience of the Government and not for the default of the Contractor, there shall be paid a percentage of the fee equivalent to the percentage of the completion of work contemplated by the contract, less fixed-fee payments previously made hereunder.

(B) In the event of the termination of this contract for the default of the Contractor, the total fixed-fee payable shall be such proportionate part of the fee (or, if this contract calls for articles of different types, of such part of the fee as is reasonably allocable to the type of articles under consideration) as the total number of articles delivered to and accepted by the Government bears to the total number of articles of a like kind called for by this contract.

If the amount determined under this paragraph is less than the total payment of fixed-fee theretofore made to the Contractor, the Contractor shall repay to the Government the excess amount.

(2) If the settlement includes only the fixed-fee, the amount thereof will be determined in accordance with subparagraph (e) (1)(iv) above.

(f) The Contractor shall have the right of appeal, under the clause of this contract entitled "Disputes," from any determination made by the Contracting Officer under paragraphs (c) or (e) above, except that if the Contractor has failed to submit its claim within the time provided in paragraph (c) above and has failed to request extension of such time, he shall have no such right of appeal. In any case where the Contracting Officer has made a determination of the amount due under paragraph (c) or (e) above, the Government shall pay to the Contractor the following: (i) if there is no right of appeal hereunder or if no timely appeal has been taken, the amount so determined by the Contracting Officer, or (ii) if an appeal has been taken, the amount finally determined on such appeal.

(g) In arriving at the amount due the Contractor under this clause there shall be deducted (1) all unliquidated advance or other unliquidated payments theretofore made to the Contractor, (2) any claim which the Government may have against the Contractor in connection with this contract, and (3) the agreed price for, or the proceeds of sale of, any materials, supplies, or other things acquired by the Contractor or sold pursuant to the provisions of this clause and not otherwise recovered by or credited to the Government.

(h) In the event of a partial termination, the portion of the fixed-fee which is payable with respect to the work under the continued portion of the contract shall be equitably adjusted by agreement between the Contractor and the Contracting Officer, and such adjustment shall be evidenced by an amendment to this contract.

(i) The Government may from time to time, under such terms and conditions as it may prescribe, make partial payments and payments on account against costs incurred by the Contractor in connection with the terminated portion of the contract whenever in the opinion of the

Contracting Officer the aggregate of such payments shall be within the amount to which the Contractor will be entitled hereunder. If the total of such payments is in excess of the amount finally determined to be due under this clause, such excess shall be payable by the Contractor to the Government upon demand, together with interest computed at the rate of 6% per annum, for the period from the date such excess payment is received by the Contractor to the date on which such excess is repaid to the Government; provided, however, that no interest shall be charged with respect to any such excess payment attributable to a reduction in the Contractor's claim by reason of retention or other disposition of termination inventory until ten days after the date of such retention or disposition.

(j) The provisions of this clause relating to the fixed-fee shall be inapplicable if this contract does not provide for payment of a fixed-fee.

(k) Unless otherwise provided for in this contract, or by applicable statute, the Contractor from the effective date of termination and for a period of six years after final settlement under this contract, shall preserve and make available to the Government at all reasonable times at the office of the Contractor, but without direct charge to the Government, all its books, records, documents, and other evidence bearing on the cost and expenses of the Contractor under this contract and relating to the work terminated hereunder, or, to the extent approved by the Contracting Officer, photographs, microphotographs, or other authentic reproductions thereof.

EXCUSABLE DELAYS (ASPR 7-203.11 AFPI 7-303.10)

(a) The Contractor shall not be in default by reason of any failure in performance of this contract in accordance with its terms (including any failure by the Contractor to make progress in the prosecution of the work hereunder which endangers such performance) if such failure arises out of causes beyond the control and without the fault or negligence of the Contractor. Such causes include, but are not restricted to: acts of God or of the public enemy; acts of the Government; fires; floods, epidemics; quarantine restrictions; strikes; freight embargoes, unusually severe weather; and failure of subcontractors to perform or make progress due to such causes, unless the Contracting Officer shall have determined that the supplies or services to be furnished under the subcontract were obtainable from other sources and shall have ordered the Contractor in writing to procure such services or supplies from such other sources, and the Contractor shall have failed reasonably to comply with such order. Upon request of the Contractor, the Contracting Officer shall ascertain the facts and extent of such failure and, if he shall determine that such failure was occasioned by any one or more of the said causes, the delivery schedule shall be revised accordingly, subject to the rights of the Government under the clause hereof entitled "Termination".

(b) If the Contractor becomes unable to complete the contract work and make delivery at the time specified in the Schedule because of technical difficulties, notwithstanding the exercise of good faith and diligent efforts in the performance of the work called for hereunder, it may give the Contracting Officer written notice of the anticipated default with reasons therefor. Such notice and reasons shall be delivered not less than forty-five (45) days before the completion date specified in the Schedule or within such time as the Contracting Officer deems sufficient. If such notice is duly given, then to the extent the interest of the Government makes an extension desirable the Contracting Officer may, in his discretion, extend the period of time specified in the Schedule for such period as he deems advisable, and this contract shall then be modified in writing accordingly.

DISPUTES (ASPR 7-103.12 AFPI 7-403.12)

(a) Except as otherwise provided in this contract, any dispute concerning a question of fact arising under this contract which is not disposed of by agreement shall be decided by the Contracting Officer, who shall reduce his decision to writing and mail or otherwise furnish a copy thereof to the Contractor. The decision of the Contracting Officer shall be final and conclusive unless, within 30 days from the date of receipt of such copy, the Contractor mails or otherwise furnishes to the Contracting Officer a written appeal addressed to the Secretary. The decision of the Secretary or his duly authorized representative for the determination of such appeals shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. In connection with any appeal proceeding under this clause, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Contractor shall proceed diligently with the performance of the contract and in accordance with the Contracting Officer's decision.

(b) This "Disputes" clause does not preclude consideration of law questions in connection with decisions provided for in paragraph (a) above: Provided, That nothing in this contract shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

NOTICE AND ASSISTANCE REGARDING PATENT INFRINGEMENT (ASPR 9-104 AFPI 7-404.13)

The provisions of this clause shall be applicable only if the amount of this contract is in excess of \$5,000.

(a) The Contractor shall report to the Contracting Officer, promptly and in reasonable written detail, each notice or claim of patent infringement based on the performance of this contract of which the Contractor has knowledge.

(b) In the event of litigation against the Government on account of any claim of patent infringement arising out of the performance of this contract or out of the use of any supplies furnished or work or services performed hereunder, the Contractor shall furnish to the Government, upon request, all evidence and information in possession of the Contractor pertaining to such litigation. Such evidence and information shall be furnished at the expense of the Government except in those cases in which the Contractor has agreed to indemnify the Government against the claim being asserted.

BUY AMERICAN ACT (ASPR 7-103.14 AFPI 7-403.14)

(c) In acquiring end products, the Buy American Act (41 U.S. Code 10a-d) provides that the Government give preference to domestic source end products. For the purpose of this clause:

(i) "components" means those articles, materials, and supplies, which are directly incorporated in the end products;

(ii) "end products" means those articles, materials, and supplies, which are to be acquired under this contract for public use; and

(iii) a "domestic source end product" means (A) an unmanufactured end product which has been mined or produced in the United States and (B) an end product manufactured in the United States if the cost of the components thereof which are mined produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. For the purposes of the (a)(iii)(B), components of foreign origin of the same type or kind as the products referred to in (b)(ii) or (iii) of this clause shall be treated as components mined, produced, or manufactured in the United States.

(b) The Contractor agrees that there will be delivered under this contract only domestic source end products, except end products:

(i) which are for use outside the United States;

(ii) which the Government determines are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality;

(iii) as to which the Secretary determines the domestic preference to be inconsistent with the public interest; or

(iv) as to which the Secretary determines the cost to the Government to be unreasonable.

CONVICT LABOR (ASPR 12-203 AFPI 7-403.15)

In connection with the performance of work under this contract, the Contractor agrees not to employ any person undergoing sentence of imprisonment at hard labor.

EIGHT-HOUR LAW OF 1912 (ASPR 12-303.1 AFPI 7-403.16)

This contract, to the extent that it is of a character specified in the Eight-Hour Law of 1912 as amended (40 U.S. Code 324-326) and is not covered by the Walsh-Healey Public Contracts Act (41 U.S. Code 35-45), is subject to the following provisions and exceptions of said Eight-Hour Law of 1912, as amended, and to all other provisions and exceptions of said Law:

No laborer or mechanic doing any part of the work contemplated by this contract, in the employ of the Contractor or any subcontractor contracting for any part of the said work contemplated, shall be required or permitted to work more than eight hours in any one calendar day upon such work, except upon the condition that compensation is paid to such laborer or mechanic in accordance with the provisions of this clause. The wages of every laborer and mechanic employed by the Contractor or any subcontractor engaged in the performance of this contract shall be computed on a basic day rate of eight hours per day; and work in excess of eight hours per day is permitted only upon the condition that every such laborer and mechanic shall be compensated for all hours worked in excess of eight hours per day at not less than one and one-half times the basic rate of pay. For each violation of the requirements of this clause a penalty of five dollars shall be imposed for each laborer or mechanic for every calendar day in which such employee is required or permitted to labor more than eight hours upon said work without receiving compensation computed in accordance with this clause, and all penalties thus imposed shall be withheld for the use and benefit of the Government.

NONDISCRIMINATION IN EMPLOYMENT (ASPR 12-802 AFPI 7-403.17)

(a) In connection with the performance of work under this contract, the Contractor agrees not to discriminate against any employee or applicant for employment because of race, religion, color, or national origin. The aforesaid provision shall include, but not be limited to, the following: employment, upgrading, demotion/or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post hereafter in conspicuous places, available for employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of the nondiscrimination clause.

(b) The Contractor further agrees to insert the foregoing provision in all subcontracts hereunder, except subcontracts for standard commercial supplies or raw materials.